

Private foundation's self-dealing; pension to disqualified person. A pension for past personal services paid by a private foundation to one of its directors, a disqualified person whose total compensation including the pension is not excessive, does not constitute an act of self-dealing under section 4941 of the Code.

Advice has been requested whether, under the circumstances described below, the payment of a pension to a disqualified person by a private foundation constitute an act of self-dealing under section 4941 of the Internal Revenue Code of 1954.

The private foundation authorized the payment of a pension for one of its directors who has served as its only full-time employee for over twenty years. His duties include general administrator, bookkeeper, investment counsellor, disbursing officer, and manager of the foundation's real estate interests. Total payments including the pension would not be excessive compensation.

The director is a disqualified person with respect to the foundation.

Section 4941(d)(1)(D) of the Code provides that self-dealing includes the payment of compensation by a private foundation to a disqualified person. However, section 4941(d)(2)(E) provides that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purposes of the private foundation shall not be an act of self-dealing if the compensation is not excessive.

The payment of pensions to retired employees has been recognized as an accepted method of employee compensation used by many public and private organizations. See Rev. Rul. 73-126, 1973-1 C.B. 220. In this case the services performed by the disqualified person for the foundation represented personal services that were reasonable and necessary in carrying out the exempt functions of the foundation. Therefore, the payment of the pension under the circumstances described by the foundation to the disqualified person for these past services would not constitute an act of self-dealing under section 4941 of the Code.

Internal Revenue Service